

SENATE BILL 1695

By Herron

AN ACT to amend Tennessee Code Annotated, Title 37,
Chapter 5, relative to confidentiality of records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-5-107, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) All applications, certificates, records, reports, and all legal documents, petitions and records made or information received pursuant to this title and directly or indirectly identifying a child or family receiving services from the department shall be kept confidential and shall not be disclosed, except as allowed by existing statutes, rules or policies, or statutes as they may be amended or as specified in this section. The department may utilize any information it has or may acquire to provide services to the child. The department may release records to a person or entity who may be providing system or program evaluation. In addition, the department shall release records in the following circumstances:

(1) Upon request, the department shall release records to any person who is the subject of a report, or to such person's parent or guardian if the person is a minor, unless the department can show by a preponderance of the evidence that disclosure of the records endangers any person;

(2) Upon request, the department shall release records to any child abuse review panels or child fatality review panels that are created or authorized by state law to review the activities of the department or to evaluate or investigate the cause of injury to or death of a child;

(3) Upon request and with the written authorization of the subject of the report or the subject's parent or guardian, the department shall release records to

any member of the general assembly for the purpose of investigating the department's actions with regard to a child who lives or whose parent lives in that member's district;

(4) The department shall release records to any grand jury or court upon presentation of an appropriate court order;

(5) The department shall release records to any person or entity who provides system or program evaluation at the request of the department;

(6) The department shall release to the Tennessee commission on children and youth any and all records requested by the commission that the commission believes necessary to perform its duties and responsibilities pursuant to § 37-3-103, particularly for the purpose of evaluating the delivery of services to children and their families served by the department;

(7) The department shall release records to any federal, state or local government entity or agent of such entity that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect in compliance with 42 USC § 5106a(b)(2)(ix); and

(8) The department shall implement regulations by no later than January 1, 2008, providing for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 USC §5106a(b)(2)(x);

(b) Any person or entity who is provided access to records pursuant to this section shall be required to maintain such records in accordance with state and federal laws and regulations regarding confidentiality.

(c) Upon placement of a child in the custody of the department of children's services, all state, county and local agencies shall, notwithstanding any state laws or

regulations to the contrary, grant access to any and all records in their possession that relate to the child for use by the department of children's services to determine a child's condition, needs, treatment or any other area of management; provided, however, that release of health care information must be consistent with the laws and policies of the departments of health and mental health and developmental disabilities. The department of children's services shall comply with federal statutes and regulations concerning confidentiality of records. Any records that are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department of children's services.

(d) Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by 20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

(e) Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.